

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

SABRINA HESTER, )  
Plaintiff, )  
v. ) CIV. ACT. NO. 3:23-cv-51-ECM  
MARTIN J. O'MALLEY, Commissioner of )  
Social Security,<sup>1</sup> )  
Defendant. )

## **MEMORANDUM OPINION and ORDER**

On December 4, 2023, the Magistrate Judge entered a Recommendation (doc. 19) to which no timely objections have been filed. Upon an independent review of the file and upon consideration of the Recommendation, it is

ORDERED as follows:

1. The Recommendation of the Magistrate Judge (doc. 19) is ADOPTED;
2. The Plaintiff's brief (doc. 13) is construed as a motion for summary judgment, and the motion for summary judgment (doc. 13) is GRANTED to the extent set forth in the Recommendation (doc. 19);
3. The Defendant's memorandum (doc. 14) is construed as a motion for summary judgment, and the motion for summary judgment (doc. 14) is DENIED;

<sup>1</sup> Since the filing of this action, Martin J. O’Malley was sworn in as Commissioner of Social Security and thus replaces Kilolo Kijakazi, Acting Commissioner. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, O’Malley is automatically substituted as the defendant in this action. The Clerk of the Court is **DIRECTED** to update the docket sheet and caption accordingly.

4. The decision of the Commissioner is REVERSED, and this case is REMANDED to the Commission for further proceedings; and

5. In accordance with *Bergen v. Comm'r of Soc. Sec.*, 454 F.3d 1273, 1278 n.2 (11th Cir. 2006), the Plaintiff shall have **90** days after she receives notice of any amount of past due benefits awarded to seek attorney's fees under 42 U.S.C. § 406(b).

A separate Final Judgment will be entered.

DONE this 12th day of January, 2024.

/s/ Emily C. Marks  
EMILY C. MARKS  
CHIEF UNITED STATES DISTRICT JUDGE